

APPEAL NO. 020549  
FILED APRIL 18, 2002

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on February 11, 2002. The hearing officer determined that the appellant (claimant) was not entitled to his first quarter of supplemental income benefits (SIBs) because he had not made a good faith search for employment commensurate with his ability to work.

The claimant has appealed, asserting that he had a complete inability to work. The respondent (carrier) requests that the fact findings of the hearing officer be upheld.

DECISION

We affirm the hearing officer's decision.

An applicant for SIBs is required to make a good faith search for employment commensurate with the ability to work. Section 408.142(a)(4). Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 130.102(d) (Rule 130.102(d)) defines good faith as follows:

Good Faith Effort. An injured employee has made a good faith effort to obtain employment commensurate with the employee's ability to work if the employee:

- (1) has returned to work in a position which is relatively equal to the injured employee's ability to work;
- (2) has been enrolled in, and satisfactorily participated in, a full time vocational rehabilitation program sponsored by the Texas Rehabilitation Commission during the qualifying period;
- (3) has during the qualifying period been enrolled in, and satisfactorily participated in, a full time vocational rehabilitation program provided by a private provider that is included in the Registry of Private Providers of Vocational Rehabilitation Services;
- (4) has been unable to perform any type of work in any capacity, has provided a narrative report from a doctor which specifically explains how the injury causes a total inability to work, and no other records show that the injured employee is able to return to work; or
- (5) has provided sufficient documentation as described in subsection (e) of this section to show that he or she has made a good faith effort to obtain employment.

Work commensurate with ability to work need not be a full-time position; only a search within restrictions is required. Texas Workers' Compensation Commission Appeal No. 982507, decided November 30, 1998 (Unpublished).

Essentially, the claimant quarrels with the manner in which the hearing officer gave weight and credibility to the evidence. The hearing officer is the sole judge of the relevance, materiality, weight, and credibility of the evidence presented at the hearing. Section 410.165(a). An appeals-level body is not a fact finder and does not normally pass upon the credibility of witnesses or substitute its own judgment for that of the trier of fact, even if the evidence would support a different result. National Union Fire Insurance Company of Pittsburgh, Pennsylvania v. Soto, 819 S.W.2d 619, 620 (Tex. App.-El Paso 1991, writ denied); American Motorists Insurance Co. v. Volentine, 867 S.W.2d 170 (Tex. App.-Beaumont 1993, no writ). The record in this case presented conflicting evidence for the hearing officer to resolve. In considering all the evidence in the record, we cannot agree that the findings of the hearing officer are so against the great weight and preponderance of the evidence as to be manifestly wrong and unjust. In re King's Estate, 150 Tex. 662, 244 S.W.2d 660 (1951). We therefore affirm the decision and order.

The true corporate name of the insurance carrier is **ROYAL INDEMNITY COMPANY** and the name and address of its registered agent for service of process is

**CORPORATION SERVICES COMPANY  
800 BRAZOS  
AUSTIN, TEXAS 78701**

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Susan M. Kelley  
Appeals Judge

CONCUR:

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Chris Cowan  
Appeals Judge

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Robert W. Potts  
Appeals Judge